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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,522	10/08/2003	Steven Allen Hellmann	18830	2945
23556	7590	11/02/2004		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
EXAMINER DURAND, PAUL R				
ART UNIT		PAPER NUMBER		
3721				

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/682,522

Applicant(s)

HELLMANN ET AL.

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-13 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/04, 3/04, 9/04, 10/
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species III in the reply filed on 8/17/2004 is acknowledged. The traversal is on the ground(s) that applicant would like to expedite the prosecution of the application. This is not found persuasive because expediency is not a valid traversal since it does not present evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-3,7-13 and 17-20 will be examined on the merits.
3. Claims 4-6 and 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/17/2004.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay (US 6,658,813) in view of Olson et al (US 5,771,658).

In regard to claims 1,2,11 and 12, Clay discloses the invention substantially as claimed including a delivery device 104 which conveys articles 14, a first transport means 50 which transports a second article 12 to a packing location (no number given, but generally in the location of half full box in Fig.2) and an assembly mechanism in the form of packing area 60 and wrap machine 115 which combines and wraps the articles (see Figs. 1-5, C2,L16-29 and C3,L36 – C5,L45). What Clay does not specifically disclose is the use of an accumulation area to stage the second articles prior to packaging. However, Olson teaches that it is old and well known in the art of packaging to provide an accumulation area in the form of a stacked article assembly 35, for the purpose of accumulating the articles 42, arranged into groups 23, prior to placement into a package 25 (see Figs. 4,5 and C4, L1-43). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with the accumulating means as taught by Olson, for the purpose of accumulating the articles prior to placement into a package 25.

In regard to claims 3 and 13, Clay discloses the invention substantially as claimed including a first type of article 14, which is can be comprised of a food container, a first transfer device in the form of conveyor 50, and a package system in the form of packing area 60, which combines the articles (see Figs. 1-5, C2,L16-29 and C3,L36 – C5,L45). What Clay does not disclose is the specific use of a packaging machine to pack the first articles. However, the examiner takes Official Notice that it is

old and well known in the art of food packaging to provide a machine which packages the food items prior to final packaging for the purpose of reducing damage to product. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with a packaging machine for both articles prior to combining for the purpose of reducing damage to product.

6. Claims 7-10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay and Olson et al in view of Jones (US 3,311,216).

In regard to claims 7,8,17 and 20, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for an accumulation mechanism, which orients the articles. However, Jones teaches that it is old and well known in the art of packaging to provide an accumulation device in the form of row means 16 and alignment means 22, which accumulates and aligns product "E" from a input source for the purpose of ensuring correct alignment prior to packaging (see Figs. 1,2 and C1,L70 – C2,L10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Clay with the accumulating and alignment means as taught by Jones for the purpose of ensuring correct alignment prior to packaging.

In regard to claims 9,10,18 and 19, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for a transfer mechanism comprised of a rotating drum or drop slide. It would have been an obvious matter of design choice to provide a transfer mechanism comprised of a rotating drum

or drop slide, since applicant has not disclosed that a transfer mechanism comprised of a rotating drum or drop slide solves any stated problem or is for any particular purpose and it appears the invention would do equally well with a conventional conveyor.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paulucci, Mattei et al, Fadaie, Braunner et al, Olson, Smith, Kirschner, Ziegler and Lashyro have been cited to shoe devices having similar structure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 703-305-4962. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
October 28, 2004



EUGENE KIM  
PRIMARY EXAMINER